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United States Trustee for Region 17

10 **UNITED STATES BANKRUPTCY COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **SAN FRANCISCO DIVISION**

13 In re

14 PROFESSIONAL FINANCIAL
INVESTORS, INC., a California
15 Corporation; PROFESSIONAL
INVESTORS SECURITY FUND, INC.,
16 a California Corporation

17 Debtors.

) Case No. 20-30604

) (Jointly Administered with Case No.
20-30579)

) Chapter 11

) Date: October 1, 2020

) Time: 11:00 a.m.

) Place: Telephone or Video Conference Only

) Judge: Hon. Hannah L. Blumenstiel

20 **UNITED STATES TRUSTEE'S OBJECTION TO THE RETENTION OF**
21 **RAGGHIANI FREITAS LLP, AND STATEMENT AND**
22 **RESERVATION OF RIGHTS**

23 Tracy Hope Davis, United States Trustee for Region 17 (the "United States Trustee"), by
24 and through her undersigned counsel, hereby files this objection to the retention of Ragghianti
25 Freitas LLP, and statement and reservation of rights to the applications of Professional Financial
26 Investors, Inc. and Professional Investors Security Fund, Inc. ("Debtors") for Orders Authorizing
27 Employment of various professionals (the "Applications"). In support of this Objection,
28 Statement and Reservation of Rights, the United States Trustee states as follows:

1 **I. INTRODUCTION**

2 Mr. Ken Casey, the recently deceased CEO of the Debtors, operated a Ponzi scheme
3 that defrauded over 500 investors who “loaned funds to [his] Companies, with a significant
4 portion of those funds being used to service the debt owed to existing investors and to
5 personally enrich Mr. Casey himself.”¹ ECF No. 5 at 4. And, according to the Debtors, “[t]he
6 scale of the potential misappropriation appears to be in the hundreds of millions of dollars, the
7 number of direct victims approximately 1,000, and the number of additionally affected
8 investors who have had their investments co-mingled with potential ill-gotten gains
9 approximately 500.” *Id.*

10 Based on the foregoing, the United States Trustee filed a motion for the appointment of
11 a trustee or an examiner under 11 U.S.C. § 1104 so that a neutral, independent third party
12 could investigate the admitted fraud, misconduct, and gross mismanagement of the Debtors’
13 affairs. ECF No. 71. Although the Debtors appointed Mr. Michael Hogan as Chief
14 Restructuring Officer shortly before filing chapter 11 (and are seeking approval of Mr.
15 Hogan’s employment by this Court), Mr. Hogan was retained by the Debtors at a time when
16 only Mr. Casey’s ex-wife, Ms. Charlene Albanese, was in control of the Debtors.²

17 The United States Trustee and Debtor’s General and Special Counsel have been
18 working towards mutually agreed resolution raised informally by the United States Trustee.
19 With the exception of issues pertaining to the retention application of Ragghianti Freitas LLP
20 (ECF No. 79) as special counsel, all other matters have been addressed unless a specific
21 objection has been filed by the United States Trustee.

22 ¹ The United States Trustee also requests that the Court take judicial notice of the pleadings
23 and documents filed in these cases pursuant to Federal Rule of Bankruptcy Procedure 9017
24 and Federal Rule of Evidence 201, and reserves all rights, including the right to seek discovery
in connection with the Motion.

25 ² Upon Mr. Casey’s death on May 6, 2020, Ms. Albanese, became the 100% shareholder of the
26 Debtors and a lifetime income beneficiary through two trusts that Mr. Casey established for Ms.
27 Albanese’s benefit. ECF No. 5. Ms. Albanese was also the sole director of the Debtor PFI until
28 her resignation. *See Action by Written Consent of the Sole Director of Professional Financial
Investors, Inc* ECF Nos. 1, 5 Case No. 20-30604 (Bankr. N.D. Cal.).

1 **II. The Scope of the Ragghianti Freitas LLP Application is Inconsistent with 11 U.S.C.**
2 **§327(e).**

3 The issues remaining with the application of Ragghianti Freitas LLP include:

- 4 1. Services include duplication of those to be performed by Sheppard Mullin
5 Richter & Hampton LLP (“Sheppard Mullin”) as general counsel and other
6 professionals. ECF No. 79, p. 4,5. The services that appear to be beyond the
7 scope of 327(e) as follows:
- 8 a. Continue investigation, forensic accounting, and recovery of Debtor’s
9 assets.
 - 10 b. Advise / Assist with legitimate business operation and corporate
11 governance matters.
 - 12 c. Locate and recover assets of Debtors.
 - 13 d. Advise / Assist with sale of assets.
 - 14 e. Advise / Assist PFI as managing member of 30 affiliated LLCs and as
15 general partner of 10 affiliated LPs.
 - 16 f. Respond to creditor / investors.
- 17 2. No engagement letter is attached to the application.
- 18 3. The partner who will perform the majority of the work serves on the North Bay
19 Advisory Board of Presido Bank who merged with Heritage Bank of
20 Commerce in 2019. Heritage has a secured claim of \$3.468 million. In light of
21 the broad scope of services to be performed by Ragghianti Freitas LLP , the
22 partners relation with Heritage Bank appears to be a disqualifying conflict. *Id.*
23 at p. 11.

24 Section 327(e) establishes a three-prong test for employment: 1) the proposed
25 employment may only be authorized for a specified special purpose; 2) the proposed
26 representation must be in the best interest of the estate; and 3) there must be no conflict with
27 the debtor or the estate arising from the matter(s) for which the trustee seeks to engage special
28 counsel. *In re Running Horse, LLC*, 371 B.R. 446, 451 (Bankr. E.D. Cal. 2007). Attorneys
retained under section 327(e) are not subject to the disinterestedness requirement of 11 U.S.C.
§ 327(a). Rather, proposed attorneys under section 327(e) “are disqualified only if [they have
an] ‘adverse interest ... with respect to the matter on which such attorney is to be employed.’”

1 *See In re Polaroid Corp.*, 424 B.R. 446, 452 (Bankr. D. Minn. 2010) (emphasis in original).
2 Attorneys retained under section 327(e) may represent a trustee only for a “specified
3 special purpose.” They may not represent a trustee in “conducting the case.” See 11 U.S.C. §
4 327(e). “Conducting the case” includes matters which are related to the reorganization of the
5 estate.³ This limitation makes sense. Attorneys retained under section 327(e) are not subject
6 to the disinterestedness requirement of section 327(a). Rather, proposed attorneys under
7 section 327(e) “are disqualified only if [they have an] ‘adverse interest ... with respect to the
8 matter on which such attorney is to be employed.’” *See In re Polaroid Corp.*, 424 B.R. 446,
9 452 (Bankr. D. Minn. 2010) (emphasis in original).

10 The Debtors have already retained Sheppard Mullin as their general counsel in
11 virtually all aspects of the case. The scope of the services to be performed by Ragghianti
12 Freitas LLP is admittedly duplicative of Sheppard Mullin. ECF No. 79, p. 15. If Sheppard
13 Mullin seeks to retain Ragghianti Freitas LLP as co-general bankruptcy counsel, then
14 Ragghianti Freitas LLP must be disinterested and meet all of the other requirement of 11
15 U.S.C. § 329(a). As set forth above, Ragghianti Freitas LLP is neither disinterested nor able to
16 meet the requirements of section 327(a). For these reasons, the Application should be denied.

17 **III. RESERVATION OF RIGHTS**

18 The United States Trustee specifically reserves all her rights to objection to any,
19 including but not limited to any subsequent applications or amendments which might be filed by
20 the Debtors, the committees or other interested parties.

21 *////*

22 *////*

24
25 ³ For example, assisting in the formulation of a plan, assisting in the carrying out of any
26 investigations by a trustee, examining the validity of liens and claims, and collecting assets when
27 legal action is required are the types of matters included in “conducting the case.” *In re Hart Oil*
28 *& Gas, Inc.*, 2013 LEXIS 3128 at *7 (Bankr. D.N.M. Aug. 2, 2013) *citing 3 Colliers on*
Bankruptcy (16th ed.), ¶327.04[9][c]. *See also In re Running Horse, LLC*, 371 B.R. at 452-453;
In re Helicraft Holdings, LLC, 2017 LEXIS 3629 at *5-7 (Bankr. D. Mont. Oct. 18, 2017).

1 **IV. CONCLUSION**

2 WHEREFORE, the United States Trustee requests the Court deny the Application of
3 Ragghianti Freitas LLP , and for other relief as the Court deems appropriate.

4 Dated: September 21, 2020

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

5
6 /s/ Terri H. Didion

7 Terri H. Didion
Attorney for the United States Trustee
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